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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUN 18 2002

In the Matter of )

Revision of the Commission's Rules )  
to Ensure Compatibility with )  
Enhanced 911 Emergency Calling Systems )

Commnet of Florida, LLC Petition )  
for Limited Waiver of Section 20.18(c) )  
of the Commission's Rules )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 94-102

**WAIVER -- EXPEDITED  
ACTION REQUESTED  
PER §1.925(b)(4)**

To: Chief, Wireless Telecommunications Bureau

**COMMNET OF FLORIDA, LLC  
PETITION FOR LIMITED WAIVER**

Pursuant to Section 1.925 of the Commission's Rules, Commnet of Florida, LLC ("CFL"), licensee of cellular call sign WPSJ791, Market No. 370A-Monroe, hereby requests a limited waiver of the June 30, 2002 deadline for digital wireless systems to be capable of transmitting 911 calls from text telephone ("TTY") devices ("Waiver Request").<sup>1</sup> Specifically, CFL hereby requests an extension of twelve months, through and including June 30, 2003, within which to achieve the capability to provide 911 service to incoming TDMA-handset roamers. No extension is requested for any CFL subscribers, nor for incoming roamers with handsets of any other technology. **Expedited handling of this Waiver Request is respectfully requested.**

In support of this Waiver Request, CFL states as follows:<sup>2</sup>

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<sup>1</sup>Section 20.18(c) of the Commission's Rules provides in pertinent part:  
*TTY Access to 911 Services.* Licensees . . . must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY).

<sup>2</sup>All facts set forth herein and not subject to official notice are supported by the attached declaration of Mr. David Walker, who is Chief CALEA/911 Liaison Official for CFL.

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## I. BACKGROUND

CFL is in the unusual position of being a brand new, stand-alone rural service area cellular licensee that is building its cellular system from scratch. Specifically, CFL, through its *pro forma* assignor/controlling party, Monroe Telephone Services, was awarded the A-block cellular license to serve Florida RSA #11A-Monroe, FCC Market No. 370A,<sup>3</sup> under call sign WPSJ791 on March 16, 2001.<sup>4</sup> CFL was one of only three entities so licensed pursuant to the unique provisions of the Local TV Act.<sup>5</sup> Thus, although the licensing of dual cellular carriers throughout most of the United States was completed over ten years ago, CFL is the first permanent A-block cellular licensee for FCC Market No. 370A. Moreover, although there is a longtime interim authority cellular licensee that has been operating in the market -- the adjacent MSA licensee, AT&T Wireless -- that interim authority licensee, as was its right, declined to sell or lease to CFL any of its embedded infrastructure equipment, and declined to allow CFL to have the use of any of its interim authority site locations.

Thus, CFL was forced to construct a whole new cellular system from scratch within the eighteen-month time frame set forth in Section 22.946 of the Commission's Rules. CFL has constructed a new 11-cell system, and is in the final stages of fine-tuning with a view toward the commencement of commercial operations later this month. CFL's new system is designed to be

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<sup>3</sup>This market consists of most of the Florida Keys, plus much of the Everglades.

<sup>4</sup>See *Public Notice*, 16 FCC Rcd. 5601 (CWD, released March 16, 2001); *recon. denied*, *Great Western Cellular Partners, LLC, et al.*, 16 FCC Rcd. 18767 (CWD, 2001); *aff'd. sub nom. Certain Rural Service Area Applications*, FCC 02-129, 17 FCC Rcd. \_\_\_\_ (released May 9, 2002) ("Certain RSAs"); *appeal pending sub nom. Ranger Cellular, et al. v. FCC*, Case No. 02-1155 (DC Circuit).

<sup>5</sup>*Launching Our Communities' Access to Local Television Act*, Title X, District of Columbia Appropriations Act of FY 2001, Pub. L. No. 106-553, 114 Stat.2762 (2000) ("Local TV Act"). See also *Certain RSAs, supra*, at ¶5 & n.16.

CALEA and E911 compliant for its subscribers; however, CFL currently plans to market either analog or dual-mode CDMA/analog phones only. At the request of AT&T Wireless, CFL also constructed capacity to serve incoming TDMA-handset roamers, however, CFL has no plans to market any TDMA handsets -- its system is designed primarily for other technologies.

Just this month, CFL received notice from AT&T Wireless that AT&T Wireless had completed an arrangement with CFL's competitor in Market No. 370A -- Cingular Wireless -- pursuant to which all AT&T Wireless TDMA-handset subscribers roaming into Market No. 370A will roam onto the Cingular cellular system in preference to the CFL system, meaning there likely will be few, if any, incoming TDMA-handset roamers attempting to access the CFL cellular system. (AT&T Wireless and Cingular Wireless are by far the two largest cellular carriers with TDMA-handset customers; collectively they constitute much more than half of all such handsets nationwide, and in Florida the percentage is even higher.)

The receipt of this information coincided with the discovery that uniquely among the different cellular technologies, there appears to be a software problem with the interface between TDMA-handset phones and CFL's switching facility, such that unlike the case with analog-only handsets and CDMA/analog handsets (where TTY access to 911 appears to be working reliably), TTY access to 911 appears to be an unreliable hit-and-miss proposition at this time.

CFL paid the FCC a large sum for its license, and also has incurred significant costs to construct its new cellular system. CFL therefore needs to be able to commence commercial operations immediately, now that the system has been constructed. Additionally, CFL faces an imminent FCC construction deadline of September 16, 2002, pursuant to Section 22.946 of the Commission's Rules.

CFL believes that it will be able to work out the problems it is encountering with respect to TTY access to 911 service for TDMA-handset phones, but requests a short extension of time, to and including June 30, 2003, within which to do so. To repeat, CFL is NOT asking for a complete waiver of the rules regarding TTY and 911 service. CFL will comply with all TTY requirements immediately with respect to its own customers' phones as well as the phones of what are expected to be the vast majority of incoming roamers. Rather, CFL requests only a limited waiver, *i.e.*, with respect to incoming TDMA-handset roamers, and then only for a limited period of time, through the end of this calendar year.

In light of the fact that AT&T Wireless has notified CFL that the incoming roamers who are AT&T Wireless customers will roam on Cingular in preference to CFL, and that Cingular Wireless customers would not normally roam on the CFL system when there is a Cingular system in place in the market, there is not expected to be any great number of incoming roamers that would be adversely affected by a grant of this waiver. The issue would apparently only arise in the unlikely event that there were an emergency in a place where Cingular, but not CFL, has a "dead spot".

Finally, because CFL's 11-cell system will have better coverage than either the former AT&T Wireless interim operation or the incumbent competitor Cingular's operation, CFL's commencement of operations will actually enhance emergency service assistance for the vast majority of users -- analog and CDMA -- that will be using cellular service in the market. Any delay in CFL's commencing operations thus could well result in a loss of life if an emergency were to occur in an area which is a "dead spot" in the Cingular system. Given that the vast majority of wireless 911 calls come from ordinary phones, and not from TTY-compatible handsets, it is much more important to extend the area of reliable cellular coverage within the market than it is to require that every form of

incoming roamer be guaranteed access to the second carrier in the market.

## **II. CFL MEETS THE STANDARD FOR GRANT OF A LIMITED WAIVER**

Under Section 1.925(b)(3)(ii) of the Commission's Rules, the Commission may grant a waiver of its rules for a wireless telecommunications carrier such as CFL where:

[i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

CFL believes that this case meets the foregoing standards for grant of the requested waiver. First, CFL is in a unique, or at least highly unusual situation, due to its having been licensed so late in time compared to other cellular licensees pursuant to the Local TV Act. CFL is in a unique or unusual position because it had no pre-existing cellular system, and because it has an upcoming construction deadline. Also, because it had no pre-existing system, it was inevitable that one or more operational problems such as this one respecting incoming TDMA-handset roamers might arise, due to the inability to conduct field tests of the infrastructure equipment.

Second, because CFL never intended to and will not market TDMA handsets to its own prospective subscribers, and because TDMA-handset roamers are expected to be only a small fraction of incoming roamers, it would be inequitable and unduly burdensome to CFL to require CFL to remain off the air until such occasional roamers could be guaranteed to receive emergency service.

In assessing where the public interest lies, the Commission must balance the needs of cellular users in general against the specialized needs of a small subset of incoming TTY TDMA-handset roamers. In the majority of Market No. 370, Cingular is already providing reliable service, and the phones of incoming TTY TDMA-handset roamers will be programmed by their home carriers to access the Cingular system as opposed to that of CFL. Thus, in the vast majority of situations

involving this subset of incoming roamers, there would be no harm caused by CFL not having reliable TDMA-handset TTY 911 capability. In contrast, the very presence of CFL's system as an alternate system would enhance safety for all CFL subscribers as well as all incoming non-TTY roamers and all incoming TTY roamers using phones with non-TDMA technologies. In addition, CFL's existence will materially enhance safety for subscribers and roamers in areas that are either dead spots for Cingular or beyond the edge of Cingular's CGSA, because CFL will have more cells and better overall coverage than does Cingular. It is in precisely these remote areas that emergencies are more likely to occur in this market, as they are the areas away from public safety patrols.

For example, two of the greatest causes of emergencies in the market are: hurricanes, which come more often in southern Florida, and especially in areas which, like the Florida Keys, are basically offshore; and incidents occurring within the Everglades, a swamp with few roads and resident alligators. There is a substantial public interest benefit in having a redundant cellular system in place in case the other is knocked out by a hurricane. Indeed, there is more of a need for a redundant cellular system in this market than in almost any other within the continental United States for this reason alone. Respecting remote portions of the Everglades, this is one of the areas where CFL expects that its new system will be filling in dead spots in the Cingular network, and where risk of personal injury is greatest if there is no emergency cellular service available.

In summary, any balancing of the needs of the public in general versus the needs of a small subset of that public militates in favor of granting the requested waiver, which is much more likely to save lives than to put anyone at risk.

Finally, CFL has no reasonable alternative than to obtain the very limited and temporary type of waiver being sought here. To emphasize, CFL is not asking for a permanent waiver, and is not

asking for a waiver as to all or even most TTY handsets within its market, but only a fraction of those TTY handsets. CFL should be afforded a reasonable amount of time after commencing commercial operations to determine the exact scope of the problem and the appropriate solution. The twelve months requested here is not an unreasonable amount of time for CFL to do so.

### **CONCLUSION**

CFL is here seeking only a very limited waiver, in terms of both scope and time period, of Section 20.18 of the Commission's Rules. Given CFL's unique factual situation, there is no chance that the Commission would be inundated with similar requests if it were to grant CFL's request. It would be inequitable under the circumstances to enforce the rule completely against CFL at this time, as well as unduly burdensome on CFL. Finally, it would be contrary to the public interest, including the public safety and the performance of the 911 system in general, to enforce the rule in its entirety in these exceptional circumstances, and CFL has no reasonable alternative to the requested waiver.

CFL respectfully requests a ruling on this Waiver Request as soon as possible, as it has no choice but to go on the air this month without being able to reliably provide TTY 911 service to incoming TDMA-handset roamers. CFL wishes to thank the Commission staff in advance for accelerating its consideration of this Waiver Request.

Respectfully submitted,  
**COMMNET OF FLORIDA, LLC**

By:   
David J. Kaufman, Its Attorney

June 18, 2002

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**DECLARATION OF DAVID WALKER**

I, David Walker, hereby state as follows:

1. I am employed by Commnet Capital, LLC (Capital), which performs certain management and operational services to Commnet of Florida, LLC (CFL), and which performed the installation of the CFL cellular system under CFL's supervision. Pursuant to Capital's obligations to CFL, I am the chief liaison official for CFL respecting CALEA and 911 matters. This declaration is submitted in support of the CFL request for temporary limited waiver of Section 20.18 of the Commission's Rules with respect to incoming TDMA-handset roamers from June 30, 2002 to and including June 30, 2003 (Waiver Request). I understand that this Declaration will be an exhibit to the Waiver Request and will be filed with the Federal Communications Commission. I have reviewed the Waiver Request, and hereby certify that all factual matters set forth therein are true and correct, to the best of my knowledge, information and belief.

2. I have been employed in the operational side of the cellular industry since 1989. I have worked on the implementation of 911 capabilities for a variety of cellular systems during virtually all of that time period. I regularly interface with PSAPs on behalf of the various cellular licensees that utilize the services of Capital and its sister companies throughout the United States, with an emphasis on rural service areas or so-called unserved areas within the fringes of MSA cellular markets. I am therefore fully competent to address the matters discussed in the Waiver Request.

Executed June 18, 2002.

I declare under penalty of perjury that the foregoing declaration is true and correct.



David Walker



**CERTIFICATE OF SERVICE**

I, Kristine Hensle, a secretary at the law firm of Brown Nietert & Kaufman, Chartered, hereby certify that I have caused a copy of the foregoing “**COMMNET OF FLORIDA, LLC PETITION FOR LIMITED WAIVER**” to be sent by first class mail, postage prepaid, this 18<sup>th</sup> day of June, 2002, to each of the following:

- Michael Ferrante  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW Room 4-C124  
Washington, D.C. 20554
- Roger Noel  
Commercial Wireless Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW Room 4-B115  
Washington, D.C. 20554



Kristine Hensle

- Via Hand Delivery